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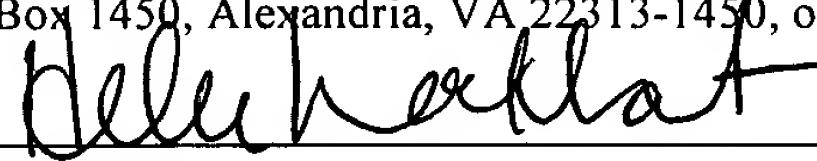
DOCKET NO: C01102.70002.US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Martha K. Newell et al.  
Serial No: 09/823,886  
Confirmation No: 7558  
Filed: March 30, 2001  
For: Compositions and Methods for Regulating Metabolism in Plants  
Examiner: David T. Fox  
Art Unit: 1638

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

The undersigned hereby certifies that this document is being placed in the United States mail with first-class postage attached, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on September 24, 2003.

  
Signature

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Transmitted herewith is/are the following document(s):

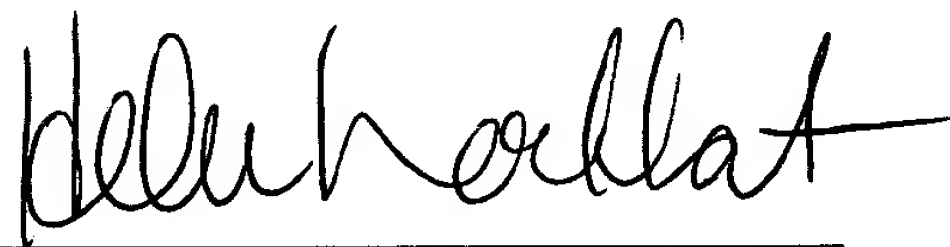
- ☒ Response to Restriction Requirement
- ☒ Return Receipt Postcard

If the enclosed papers are considered incomplete, the Mail Room and/or the Application Branch is respectfully requested to contact the undersigned at (617) 720-3500, Boston, Massachusetts.

Please charge the fee for a one month extension of time to the account of the undersigned, Deposit Account No. 23/2825. A duplicate of this sheet is enclosed.

Respectfully submitted,

*Martha K. Newell et al., Applicants*



Helen C. Lockhart, Reg. No. 39,248  
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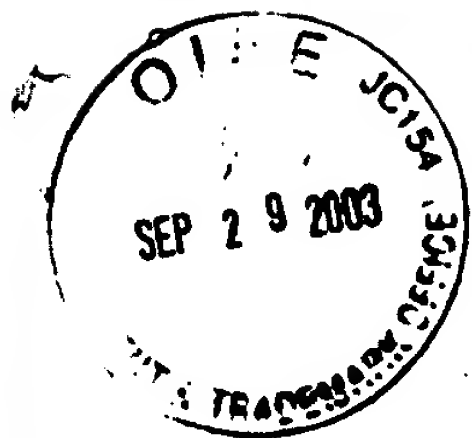
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**TECH CENTER 1600/2900**

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Docket No.: C01102.70002.US  
Date: September 24 2003  
x09/24/03



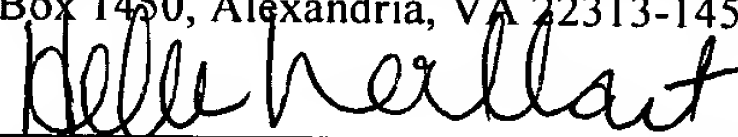
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Sir:

RESPONSE TO RESTRICTION REQUIREMENT

This is in response to the Election/Restriction Requirement mailed on July 24, 2003. Applicants hereby request a one month extension of time for response to and including September 24, 2003. Please charge the fee for the extension of time and any fee deficiency to Deposit Account No. 23/2825.

ELECTION

Applicants hereby elect the claims of Group I (claims 1-12 and 42-46, drawn to a plant expressing a cell wall UCP), with traverse. As further required by the Examiner upon election of Group I, Applicants further elect the following single nucleotide sequence and corresponding amino acid sequence: SEQ ID NO.: 8.

REMARKS

In response to the Restriction Requirement, Applicants have elected to prosecute Group I (claims 1-12 and 42-46, drawn to a plant expressing a cell wall UCP), and further elect SEQ ID NO. 8, with traverse.

The traversal is made on the grounds that restriction to a single nucleotide sequence is inappropriate. The reason provided for the separate election of nucleotide sequences is that "each nucleotide and amino acid sequence is not a member of single genus of invention, but constitutes an independent and patentably distinct invention." This statement is incorrect. The claimed invention is based in part on the discovery that UCP is present in cellular membranes other than the mitochondrial membrane, i.e. cell wall membrane, and that the presence or absence of UCP in different membranes has important implications for the regulation of plant cell metabolism. The claimed invention encompasses a plant expressing a heterogonous UCP in the cell wall membrane. Applicant is not claiming a new type of UCP. Thus, the different sequences of UCP should not be considered to be a separate invention. If the sequences of UCP remain subject to a restriction requirement, at a minimum they should be considered to be a species of a single genus of UCP molecules.

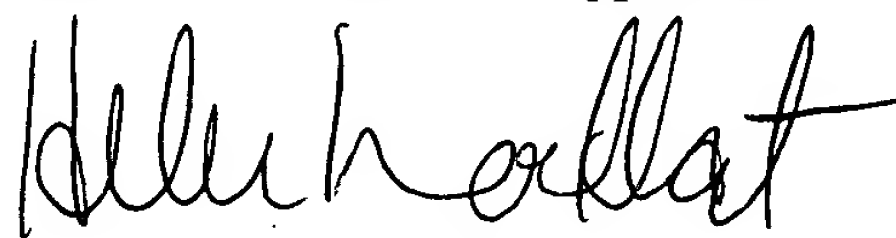
Having made this election, Applicants expressly reserve the right to file one or more divisional applications on the subject matter of the nonelected claims.

### CONCLUSION

If this response is not considered timely filed and if the extension of time is otherwise absent or incorrect, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,

*Martha K. Newell et al., Applicants*



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